IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.

FALSTAFF BREWING CORP., GOEBEL BREWING COMPANY OF CALIFORNIA, MONTEVERDE & PARODI, INC., RALPH MONTALI, INC., PACIFIC GAS & ELECTRIC COMPANY, PABST BREWING COMPANY, HARRY F. RATHJEN CO., SAN FRANCISCO BREWING CORPORATION, MELVIN SOSNICK COMPANY, TWIN PEAKS DISTRIBUTING CO., VICK'S DISTRIBUTING COMPANY, N. CERVELLI & COMPANY, CALIFORNIA WINE ASSOCIATION, BROWN & BIGELOW, CARLO ARBASETTI, THE ALBERT PETERS CO.,

Petitioners,

vs.

KAL W. LINES,

Respondent.

BRIEF OF ROCKY MOUNTAIN ASSOCIATION OF CREDIT MEN AS *AMICUS CURIAE*

INTEREST OF THE *AMICUS CURIAE*

The *amicus curiae*, Rocky Mountain Association of Credit Men, is an association comprising approximately 475 members, being chiefly wholesalers, manufacturers, bankers, jobbers and finance companies in Colorado and in other states, comprising in general the area known as "the Denver trade territory".

The Rocky Mountain Association of Credit Men has as one of its primary purposes the improvement of bankruptcy administration. Its members are jealous of the right accorded to creditors by 11 U.S.C.A. Sec. 72a (Bankruptcy Act Section 44a) to elect a trustee of their own selection. Creditors believe that such right is essential to honest and efficient bankruptcy administration, and that any decision which arbitrarily infringes upon such right is a grave threat to the integrity of bankruptcy administration. It regards the order of the Court of Appeals for the Ninth Circuit in this case as a dangerous and unwarranted infringement upon creditors' prerogatives in bankruptcy, and that the same is contrary to the spirit and intent of the Bankruptcy Act and in direct conflict with the decisions of other Circuits cited in this brief.

ADOPTION OF PORTIONS OF BRIEF OF NATIONAL ASSOCIATION OF CREDIT MEN AS *AMICUS CURIAE*

The Rocky Mountain Association of Credit Men as *amicus curiae* adopts the portions of Brief of National Association of Credit Men as *amicus curiae* beginning with the heading "Statutes Involved" on page 2 thereof and continuing to but not including the heading "Conclusion" on page 20 thereof.

ADDITIONAL COMMENT ON POINT III OF BRIEF OF NATIONAL ASSOCIATION OF CREDIT MEN AS *AMICUS CURIAE*

The Rocky Mountain Association of Credit Men has an additional interest in sustaining the rule stated in the decision of the Circuit Court of Appeals for the Tenth Circuit in *Garrison vs. Pilliod Cabinet Company*, 50 Fed. (2d) 1035, for the reason that the operations of the Rocky Mountain Association of Credit Men are conducted largely within the

Tenth Circuit. The administration of the Bankruptcy Act within such area being governed by the decisions of the Tenth Circuit, will continue to be so governed unless this Court shall announce a rule contrary to the principle stated by the Court of Appeals for the Tenth Circuit in said Garrison case.

CONCLUSION

For reasons above stated, we believe that without any substantial reason the statutory right of creditors to elect a trustee of their own choosing has, in this case been, arbitrarily denied, and that the decision is of such far reaching importance to the business interests of this country that it should be reviewed and reversed by this Court, and that the order of the District Court reversing the Referee (T. R. pp. 79 to 85) should be affirmed.

Dated: Denver, Colorado

September———, 1956.

Respectfully submitted,

FREDERICK P. CRANSTON
Attorney for Rocky Mountain Association of Credit Men

Office and Postoffice Address
409 Equitable Building
Denver 2, Colorado

IN THE

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Petitioners,

vs.

KAL W. LINES,

Respondent.

MOTION OF ROCKY MOUNTAIN ASSOCIATION OF CREDIT MEN FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF AS *AMICUS CURIAE*

The Rocky Mountain Association of Credit Men respectfully moves this Court for leave to file the accompanying brief in this case as *amicus curiae*. The consent of the attorneys for the petitioners herein has been obtained but the attorney for the respondent herein refuses to consent to the filing of a brief by the Rocky Mountain Association of Credit Men as *amicus curiae*.

The question involved is the extent of the power of the court of bankruptcy to disallow the votes of creditors in the

election of a trustee in bankruptcy, and specifically whether creditors may be disfranchised merely because their proxies were solicited by a committee of creditors all of whom were members of a trade association to the secretary of which the bankrupt had made an assignment for the benefit of creditors.

The applicant, Rocky Mountain Association of Credit Men, is an association created by members engaged in the mercantile business, most of whom are bankers, finance companies, manufacturers, jobbers and wholesalers who extend credit to other manufacturers or wholesalers or to retailers. It is a Colorado corporation, maintaining its office in the City and County of Denver in said state, and renders services in Colorado and other states, embracing in general the area known as "the Denver trade territory". It is engaged in rendering to its members the same type of service as other associations throughout the United States render to their members in their respective localities, and is an affiliated unit of the National Association of Credit Men and its members are members of the National Association of Credit Men. A portion of the activities of the Rocky Mountain Association of Credit Men consists in safeguarding the administration of estates in bankruptcy against fraud and exploitation by persons seeking to advance their own interests as against the interests of general creditors.

The applicant believes that the question for decision is of paramount importance to the business interests of the country and should be reviewed by this Court, and that the argument of the petitioner herein as set forth in the Petition for Certiorari (a) inadequately sets forth the importance of the question presented, and (b) fails to point out the conflict between the decision in the instant case and prior decisions of other courts of equal jurisdiction with respect

to the basis upon which the court of bankruptcy may exercise its jurisdiction pursuant to Section 2 (17) of the Bankruptcy Act to disapprove the appointment of trustees by creditors.

FREDERICK P. CRANSTON
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FILED
OCT 8 1956
JOHN T. FEY, Clerk

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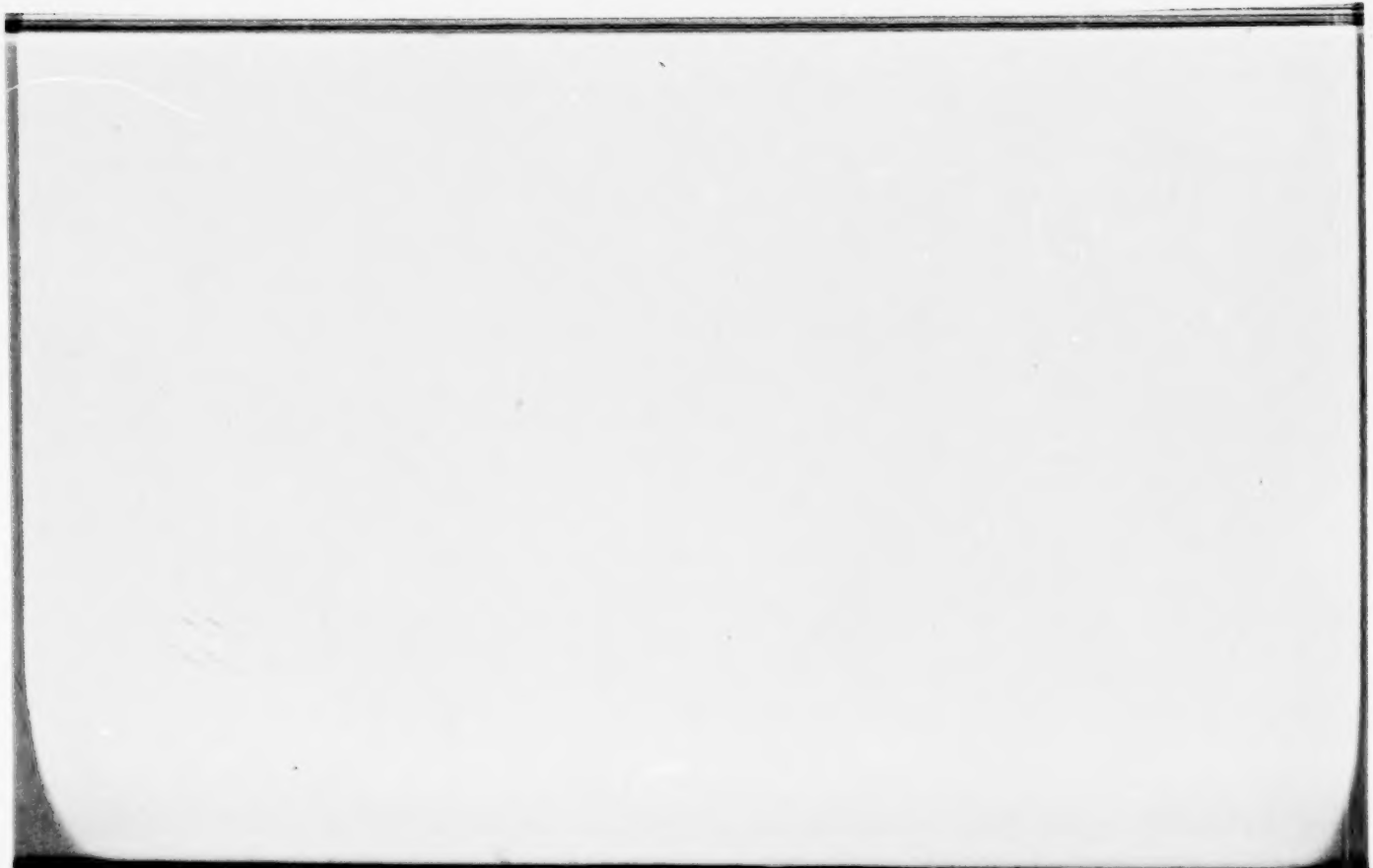
Respondent.

OBJECTION TO MOTION OF ROCKY MOUNTAIN ASSOCIATION OF CREDIT MEN TO FILE BRIEF AS AMICUS CURIAE.

MAX H. MARGOLIS,
155 Montgomery Street, San Francisco 4, California,
Counsel for Respondent.



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vs.

KAL W. LINES,

Respondent.

OBJECTION TO MOTION OF ROCKY MOUNTAIN ASSOCIATION OF CREDIT MEN TO FILE BRIEF AS AMICUS CURIAE.

Respondent Kal W. Lines objects to the motion for leave to file brief as amicus curiae, and withheld

consent to the filing thereof, for the following and each of the following reasons:

1. **THE PETITION FOR CERTIORARI DOES NOT INVOLVE AN IMPORTANT QUESTION OF LAW.**

The decision of the Court of Appeals is to the effect that a referee in supervising the election of a trustee may apply the principles and rules of equity jurisprudence, and that *under the facts and circumstances of the particular case* the referee exercised a sound legal discretion in doing so. The decision was confined and will be confined to the factual setup of the particular case, and it poses no important question of law requiring settlement by this Court.

---

2. **THE PETITION FOR CERTIORARI DOES NOT INVOLVE A CONFLICT OF DECISION.**

A plain reading of the case of *Garrison v. Pilliod Cabinet Co.*, 50 F. 2d 1035, upon which the amicus curiae brief as well as the petition for certiorari relies as basis for a contention that conflict of decision exists, brings the ready conviction that the cited case is in harmony rather than in conflict with the decision herein.

---

3. **THE PETITION FOR CERTIORARI DOES NOT INVOLVE A DECISION THAT IS INCORRECT.**

The decision of the Court of Appeals is its own best advocate. It is sound in law and sound in fact and no occasion exists for disturbing it.

4. **THE PROPOSED BRIEF OF AMICUS CURIAE DOES NOT SHOW INADEQUACY OF PRESENTATION BY THE PETITIONERS.**

The proposed brief of amicus curiae is merely a proposal to adopt the proposed brief of another would be amicus curiae. It demonstrates what respondent sensed when consent to file amici curiae briefs was withheld, namely, that other Boards of Trade or Credit Associations are eager to add their weight to petitions for certiorari sponsored by one of their number, even though, as here, there is no inadequacy of presentation by the petitioners.

Wherefore, respondent respectfully submits that the motion of Rocky Mountain Association of Credit Men for leave to file brief as amicus curiae should be denied.

Dated, San Francisco, California,
October 4, 1956.

MAX H. MARGOLIS,
Counsel for Respondent.

FILED
OCT 8 1956
JOHN T. FEY, Clerk

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Petitioners,

vs.

KAL W. LINES,

Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

DANIEL L. BOLAND
Attorney for
NATIONAL PAINT, VARNISH & LACQUER ASSN., INC.
1500 Rhode Island Avenue, N. W.
Washington 5, D. C.

In the Supreme Court of the United States

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FALSTAFF BREWING CORP., GOEBEL BREWING COMPANY OF CALIFORNIA, MONTEVERDE & PARODI, INC., RALPH MONTALI, INC., PACIFIC GAS & ELECTRIC COMPANY, PABST BREWING COMPANY, HARRY F. RATHJEN CO., SAN FRANCISCO BREWING CORPORATION, MELVIN SOSNICK COMPANY, TWIN PEAKS DISTRIBUTING CO., VICK'S DISTRIBUTING COMPANY, N. CERVELLI & COMPANY, CALIFORNIA WINE ASSOCIATION, BROWN & BIGELOW, CARLO ARBASETTI, THE ALBERT PETERS CO.,

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KAL W. LINES,

Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The National Paint, Varnish and Lacquer Association, Inc. respectfully moves this Court for permission to file a brief as *amicus curiae* in this case. Consent to the filing of such a brief was granted by the petitioners but was refused by the respondent.

The National Paint, Varnish and Lacquer Association, Inc., is a non-profit, Delaware corporation, with

its principal office at 1500 Rhode Island Avenue, N. W., Washington 5, D. C. Its members, numbering approximately 1200, are engaged in the manufacture and distribution of paint, varnish, lacquer and allied products, or of the materials used in such manufacture, and collectively produce about 90 per cent of the total national volume of these products.

The National Paint, Varnish and Lacquer Association, Inc. is the national trade association for the Paint, Varnish and Lacquer Industry. It has thirty-one affiliated local paint, varnish and lacquer associations located in Atlanta, Georgia; Baltimore, Maryland; Birmingham, Alabama; Buffalo, New York; Chicago, Illinois; Cincinnati, Ohio; Cleveland, Ohio; Denver, Colorado; Dallas, Texas; Detroit, Michigan; San Francisco, California; Houston, Texas; Indianapolis, Indiana; Kansas City, Missouri; Los Angeles, California; Louisville, Kentucky; Memphis, Tennessee; Milwaukee, Wisconsin; Minneapolis, Minnesota; Nashville, Tennessee; Boston, Massachusetts; New Orleans, Louisiana; New York, New York; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Portland, Oregon; Seattle, Washington; Richmond, Virginia; St. Louis, Missouri; Toledo, Ohio; and the District of Columbia.

The Association has an active Credit and Collections Committee representing all segments and all geographical areas of our industry. One of the primary concerns of this Committee is the collection of debts and claims from debtors of Association members. The local associations have Credit and Collection Committees similar-

ly concerned with the collection of debts owed to their members.

Member companies of the National Association and local associations are deeply concerned with the decision by the United States Court of Appeals for the Ninth Circuit reported at 233 Fed. 2d 927, which precludes creditors of a bankrupt from voting for a candidate for trustee by reason of the fact that such creditors coincidentally belonged to the same trade association.

The effect of the decision of the Court of Appeals in reversing the District Court and affirming the order of the Referee in Bankruptcy is widespread. It would place the activities of these Credit and Collections Committees in jeopardy by reason of the fact they are conducted through and by a trade association. The arbitrary and capricious exclusion of creditor-members of a trade association by the Referee in this case will result in the disenfranchisement of creditors throughout the country. There is nothing in the Bankruptcy Act or in the history of its administration to support such an abuse of the supervisory powers of the Referee.

The right to select trustees in bankruptcy rests primarily with creditors. Likewise, individual companies, firms or persons have the right of joining and engaging in the activities of a trade association. The exercise of these two rights when the creditor happens to be a trade association member should be recognized by this Court in its consideration of the petition for writ of certiorari now pending before this Court.

The privileges and functions of a trade association and of its members are directly and substantially in-

volved in this case. A full presentation of the rights involved and the need for this Court to set limitations on the supervisory powers of the Referee are required to prevent discrimination against and denial of rights under the Bankruptcy Act to creditors and trade association members.

The briefs submitted to the Court of Appeals by the parties did not make manifest the importance of this decision to creditor-members of associations and credit committees of associations generally. It does not appear likely that facts and argument relating to the impact of the decision upon these interests will be made available to the Court.

We respectfully submit that information and argument as to the effect of this decision upon credit committees country wide will aid the court in its consideration of the petition for writ of certiorari. Permission to file an *amicus curiae* brief is accordingly requested.

Respectfully submitted,

DANIEL L. BOLAND
Attorney for
NATIONAL PAINT, VARNISH & LACQUER ASSN., INC.
1500 Rhode Island Avenue, N. W.
Washington 5, D. C.

Office - Supreme Court, U.S.
FILED
OCT 1 3 1956
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MAX H. MARGOLIS,
155 Montgomery Street,
San Francisco 4, California,
Counsel for Respondent.

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Respondent Kal W. Lines objects to the motion for leave to file brief as amicus curiae, and withholds con-

sent to the filing thereof, for the following and each of the following reasons:

1. **THE PETITION FOR CERTIORARI DOES NOT INVOLVE AN IMPORTANT QUESTION OF LAW.**

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A plain reading of the case of *Garrison v. Pilliod Cabinet Co.*, 50 F. 2d 1035, upon which the petition for certiorari relies as basis for a contention that conflict of decision exists, brings the ready conviction that the cited case is in harmony rather than in conflict with the decision herein.

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3. **THE PETITION FOR CERTIORARI DOES NOT INVOLVE A DECISION THAT IS INCORRECT.**

The decision of the Court of Appeals is its own best advocate. It is sound in law and sound in fact and no occasion exists for disturbing it.

4. THE PROPOSED BRIEF OF AMICUS CURIAE DOES NOT ACCOMPANY THE MOTION, AND INADEQUACY OF PRESENTATION BY PETITIONERS IS NOT SHOWN.

The above considerations suffice to defeat the motion. Stripped of all pretense, moreover, the motion merely indicates that Boards of Trade, Credit Associations, and similar organizations, in general, are of the view that this Honorable Court should grant certiorari because one of their number, in particular, is dissatisfied with the ruling of a referee in a bankruptcy proceeding.

Wherefore, respondent respectfully submits that the motion of National Paint, Varnish & Lacquer Assn., Inc., for leave to file brief as amicus curiae should be denied.

Dated, San Francisco, California,
October 10, 1956.

MAX H. MARGOLIS,
Counsel for Respondent.